IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.18664 OF 2007
AND
M.P.NO.1 OF 2007

S.Umar Farook .. Petitioner

Vs.

1.The Chairman,
Tamilnadu Slum Clearance Board,
Kamarajar Salai,
Chennai-600 005.
2.The Assistant Executive Engineer,
Tamilnadu Slum Clearance Board,
Kannagi Nagar,
Chennai-600 096. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus, forbearing the respondents from conducting auction to run Cable T.V. Connection service at Kannagi Nagar Tamilnadu Slum Clearance Board tenament for the period from 31.3.2007 to 01.04.2008.

For Petitioner : Dr.G.Krishnamurthy
For Respondents: Mr.P.S.Raman, Addl.Advocate General
for Mr.Y.Bhuvanesh Kumar

ORDER

Invoking the writ jurisdiction of this court, the petitioner has sought for the issue of a writ of mandamus to restrain the respondents from conducting auction to run cable T.V. Connection service at Kannagi Nagar, Tamil Nadu Slum Clearance Board tenament for the period from 31.3.2007 to 01.04.2008.

2.The affidavit filed in support of the petition and also the counter affidavit are perused. The court heard the learned counsel on either side.

3.The learned counsel for the petitioner would submit that the petitioner was granted licence to run cable TV business at Kannagi Nagar on 4.3.2004 and it was being renewed; that the petitioner has filed W.P.No.30732 of 2005 and this court, by an order, dated 14.11.2005, has allowed the petitioner to run the business till 1.12.2005; that the petitioner has made a representation on 6.12.2006 expressing his willingness to pay Rs.50000/- towards 5 years lease premium. His

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representation was not considered. Since his representation was not considered, he moved this court by way of writ petition in W.P.No.444 of 2006 to direct the respondent to consider the same. An order came to be passed on 14.2.2006 that the representation should be considered within a period of four weeks from the date of receipt of copy of this order. Further an order came to be passed on 8.2.2007 in W.P.No.6841 of 2006 and W.P.No.7136 of 2006, directing the respondents to call for auction before 31.3.2007 for the issue of a fresh licence for the period commencing from 1.4.2007, but the respondent has not conducted auction; that the respondents received Rs.24000/- towards lease amount to run the Cable TV for one year period commencing from 1.4.2007; that now, it comes to the knowledge of the petitioner that public auction is fixed on 23.5.2007 at 10.00 a.m. to run cable TV at Kannagi Nagar without mentioning the period and under these circumstances, if the respondents are allowed to conduct auction, it would be an infringement of right of the petitioner to run cable TV, for which the respondents have received Rs.24000/- and issued receipt therefor for the period of one year, commencing from 1.4.2007 and under these circumstances, the writ has got to be issued against the respondents.

4.Contrary to the above, the learned Additional Advocate General, appearing for the respondents, would submit that in the instant case, the writ petition has been brought forth on the strength of the receipt alleged to have been issued by the department, but not so; that the receipt has been issued by the subordinates for Rs.24000/-, which would represent the arrears payable by the petitioner for the earlier period; that it is not received by the Subordinates for the period commencing from 1.4.2007 and on the strength of which, the petitioner cannot be allowed to run the business; that charge memos have been served upon the subordinates and they have been kept under suspension for the violation of the order of this court; that it is pertinent to point out that this court, by an order, dated 8.2.2007 in W.P.Nos.6841 and 7136 of 2006, has directed the respondents to conduct auction before 31.3.2007; that it is true, auction was not conducted within the time, but the auction is scheduled to take place on 23.5.2007; that notice has also been issued; that merely because there is a delay in conducting auction, the petitioner cannot have the benefit of the same either, or rely upon the receipt clandestinely issued by the subordinates, against whom actions have been taken and under these circumstances, the writ petition has got to be dismissed.

5.After careful consideration of the submissions made, the court is of the considered opinion that no writ could be issued against the respondents, as asked by the petitioner. It is not in controversy that the petitioner, by virtue of licence issued in his favour, has been carrying on cable TV business at Kannagi Nagar area till 31.3.2006. On earlier occasion, writ petitions have been filed by the petitioner and also by the rivalry. Those petitions came up for consideration before this court on 8.2.2007, wherein orders have been passed, directing the respondents to conduct auction before 31.3.2007 and issue a fresh licence for the period commencing from 1.4.2007. It is also quite evident from the said order that the receipt now relied on by the petitioner and on the strength of which those writ petitions have been brought forth, were actually brought to the notice of the court at that time and they were considered also and after considering the same, this court has passed an order, directing the respondents to conduct auction on or before 31.3.2007 and to issue a fresh licence for the period commencing from 1.4.2007. At

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that juncture, the petitioner has relied on the receipt issued by the subordinates of the respondents Department. Even assuming that the receipt has been issued by the Department even for future period, the court is of the considered opinion that it is thoroughly illegal and invalid, in view of the order of this court, wherein there was a direction to conduct a public auction on or before 31.3.2007 and also to issue a fresh licence for the period commencing from 1.4.2007.

6.Added further circumstance is that action has been taken against the subordinates by the respondent Department. Now, at this juncture, the petitioner cannot have the benefit of the receipt either, or cannot urge the delay caused in conducting public auction, as a reason for continuing his business. Once there was an order by this court that the cable TV business in that area should be done by the Slum Clearance Board only by way of public auction, there is no question of either department permitting or the petitioner continuing the business contrary to the order of this court. Under these circumstances, as per the orders of this court made earlier, the Slum Clearance Board has to conduct public auction in respect of the Cable TV business in that area. Both the petitioner and all other public are entitled to participate therein.

7.Apart from that, the receipt has been brought to the notice of the court. The charge memo issued would cover the amount of Rs.24000/-, which was paid by the petitioner on 19.4.2007 to the Slum Clearance Board. From the very reading of the charge memo issued by the Slum Clearance Board to the subordinates would clearly reveal that Rs.24000/- was received towards licence fee and nowhere it is stated that it was towards any arrears of fee. Under these circumstances, the court is of the considered opinion that it is a fit case where a direction has got to be issued to the respondents Slum Clearance Board to make repayment of Rs.24000/-, which would cover under the receipt and was received by the department, within a period of eight weeks herefrom to the petitioner herein. Accordingly, a direction is issued.

8.It is also made clear that the public auction should be held and a fresh licence has got to be issued by the respondents Department to run the cable TV business in that area, as already held by this court in the earlier writ petitions in W.P.Nos.6841 and 7136 of 2006, dated 8.2.2007. Accordingly, the public auction should be held and a fresh licence should be issued by the respondents department at the earliest, in which both the petitioner and the other public are entitled to participate. In the interest of public, it is fit and proper that the petitioner should be directed to continue his business till the new licence is granted by way of public auction. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, the connected MP is closed.

VVK

sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Chairman,
  Tamilnadu Slum Clearance Board,
  Kamarajar Salai,
  Chennai-600 005.

2.The Assistant Executive Engineer,
  Tamilnadu Slum Clearance Board,
  Kannagi Nagar,
  Chennai-600 096.

+ 1 cc to Mr.DR.G.Krishnamurthy Advocate SR.NO.58252
+ 1 cc to M/s.Y.Bhvuanesh Kumar Advocate SR.NO.58093

AKR(CO)
RD 26.9.07

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